



Family Liaison Office

## **Divorce FAQs**

### **Frequently Asked Questions about Divorce in the Foreign Service**

**Q: How can a separating/divorcing spouse leave post?**

**A:** A spouse who leaves post before the tour of duty ends can leave using advance travel authority. It is post management's responsibility to support the best outcome for the family. The spouse will receive travel orders and a ticket for return to the U.S., and is eligible for HHE and airfreight shipments. The HHE and airfreight should be shipped from post in the spouse's name. The weight of the advance shipment is then subtracted from the total weight allowed at the employee's next transfer. Airfreight is authorized per person travelling. (6 FAM 126)

Before the spouse departs post, the couple should both sign and have notarized the following statements:

- Statement of mutual consent that one partner is not deserting or abandoning the other
- Joint Property Statement which will allow the spouse access to goods in storage; and
- Authorization to Receive Goods Shipped From Post, which will allow the spouse to receive household effects

The separating spouse is not eligible for Separate Maintenance Allowance. This allowance is not intended for situations of marital separation or divorce. (DSSR 261.1b)

**Q: Can a separating/divorcing spouse be forced to leave post?**

**A:** If a couple separates at post and spouse does not wish to leave post immediately, there is flexibility for post in some cases, where there is unoccupied property in the housing pool, to accommodate both members of the couple in government housing on a temporary basis. An example of accommodation would be providing separate housing for a spouse who wishes to stay at post to allow the children to finish the school year. (6 FAM 133.2-1)

**Q: How can a separating spouse gain access to goods in storage?**

**A:** The separating couple should sign and have notarized a Joint Property Statement which authorizes the spouse to obtain access to goods in storage. Each spouse should keep copies, and a copy must be presented to the Transportation Division of the employee's agency. (6 FAM 126)

**Q: What if an employee refuses service of papers?**

**A:** Service of papers (or service of process) refers to the serving of court orders by one party on another. The position of the Department of State is that refusal of an overseas employee to accept service reflects adversely upon the U.S. government and may result in the employee's reassignment to the U.S. so that the service can be made and divorce proceedings can begin. A Foreign Service employee may not use an overseas assignment, or diplomatic status, to avoid service of process. (22 CFR 172.2(d))

**Q: Does a spouse have a right to a portion of the employee's pension?**

**A:** Yes, a spouse has an *automatic* right to a portion of the employee's pension if the spouse meets certain eligibility requirements. These requirements are: 1) that the spouse have been married to the employee for at least ten of the employee's years of creditable government service, at least five of which were with the foreign service, and 2) that the spouse not remarry before the age of 55. If the spouse meets these requirements, he or she has a right to a prorated share of up to 50% of the retirement pension. Since this right is automatic, the spouse should be careful not to sign it away without careful consideration, and, preferably, legal advice. (Foreign Service Act, 1980, P.L. 960465, Section 814)

**Q: What about health insurance coverage for the spouse?**

**A:** For a qualifying spouse, there is a 60 day window following the finalization of the divorce in which the spouse may opt to enroll in any of the government health plans at his or her own cost. To qualify, the spouse must have been enrolled in one of the government health plans as a family member at any time during the previous 18 months and must not remarry before the age of 55. The spouse must contact the Retirement Office in the Department of State, or the Personnel Office of their agency during the 60 days following the divorce. (P.L. 98-615)

If the spouse does not qualify for a pro rata share of the pension, the spouse may still be eligible for a 36 month coverage of health insurance if he or she was enrolled as a family member at the time of the divorce. (P.L. 100-654)

**Q: How can an employee's wages or pension be garnished?**

**A:** Wages of an employee or pension of a retiree can be garnished for child support or alimony payment if the ex-spouse presents a court order for debt garnishment to the Office of Legislation and General Management at the Department of State, or to their agency. (5 U.S.C., 5520a(j)(2))

**Q: Are there any other consequences for a Foreign Service Officer who is in arrears with child support?**

**A:** Any individual owing over \$5000 in child support is prohibited from receiving a new or renewed passport. This statute includes tourist, diplomatic and official passports. (P.L. 104-93)

**Q: Can a spouse's diplomatic passport be taken away?**

**A:** As long as the couple has not yet divorced and the spouse is on the employee's travel orders for the post to which the employee is assigned, the spouse is entitled to hold a diplomatic passport. A spouse who is not a U.S. citizen may not carry a U.S. passport, diplomatic or tourist. (For entitlements see Title 22, CFR Section 51.3)

**Q: Does a foreign-born spouse of a Foreign Service Officer have the same rights regarding divorce as a U.S.-born spouse?**

**A:** Yes. A foreign-born spouse, whether a U.S. citizen or not, has the same rights under Department of State regulations as does a U.S.-born spouse. The couple should be aware that foreign marriages and divorces may not always be recognized in U.S. courts. Also, the Department of State may not recognize provisions for former spouse benefits that may be included in a foreign divorce. (Title 22, Part 19, Section 19.2 (f))

***For further information see the Family Liaison Office's booklet "The Foreign Service Family and Divorce," newest edition published in May, 2000.***